

IN RE: PETITION FOR ZONING VARIANCE
E/S Timberpark Court, 610' N
of the c/l of Old Bosley Road
(7 Timberpark Court)
8th Election District
3rd Councilmanic District
Venice K. Paterakis
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-169-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for Baltimore County as a Petition for Zoning Variance filed by the owner of the subject property, Venice K. Paterakis. The Petitioner requests relief from Section 1A03.4.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a dwelling height of 43 feet in lieu of the maximum permitted 35 feet and to amend the Final Development Plan of Timberline Park, Section Two, for a proposed dwelling as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition was Ms. Paterakis' husband, Fred Smith, who is co-owner of the subject property. Also appearing was Steve Broyles, Registered Professional Engineer. Mr. Broyles prepared the site plan of the subject property which was submitted into evidence as Petitioner's Exhibit 1. There were no Protestants.

Testimony indicated that the subject property, known as 7 Timberpark Court, consists of 4.266 acres, zoned R.C. 4, and is an unimproved lot located within the Timberline Park Subdivision, a residential community of substantial homes. The Petitioner proposes to construct a large dwelling on the subject lot. The proposed dwelling will be approximately 143 feet long and 65 to 85 feet in depth. Due to the large dimensions of the proposed dwelling a variance from the 35-foot height limitation contained

in Section 1A03.4A is requested. Specifically, testimony presented indicated that a building height of 43 feet would allow for a better dwelling, both architecturally and aesthetically. Further, the Petitioner produced a copy of the restrictive covenants for dwellings in the subject development. These covenants require all roofs to be pitched to 45 degrees, unless permission of the Architectural Committee of Timberline Park is first approved. In fact, that committee has approved the Petitioner's proposal, both as to the roof pitch and height of the proposed dwelling. As significantly, Mr. Broyles indicated that the structural integrity of the dwelling may be compromised if strict adherence to the height limitations were required. This possibility is due to the large area of the dwelling house. Lastly, it was noted that the subject lot is adjacent to the Loch Raven Reservoir watershed. Thus, it appears that granting of the requested relief will result in no impact to surrounding properties.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

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It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good. Clearly, strict compliance with the requirements of Section 1A03.4A of the B.C.Z.R. would cause the Petitioner a practical difficulty. Specifically, the size of the proposed dwelling, its architectural and structural stability, and aesthetic concerns all justify a granting of the variance. To deny the relief requested would unduly restrict the use of the land and prohibit the Petitioner from developing in the manner proposed. In addition, the variance requested will not cause any injury to the public health, safety or general welfare and will be in strict harmony with the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of January, 1993 that the Petition for Zoning Variance requesting relief from Section 1A03.4.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a dwelling height of 43 feet in lieu of the maximum permitted 35 feet and to amend the Final Development Plan of Timberline Park, Section Two, for a proposed dwelling in accordance with Petitioner's Exhibit 1. be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return,

- 3 -

and be responsible for returning, said property to its original condition.

LES:bjs

Lawrence E. Schmidt
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 1/22/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 1/22/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 1/22/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 1/22/93
By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-4386

January 12, 1993

Ms. Venice K. Paterakis
1109 Dulaney Gate Circle
Cockeysville, Maryland 21030

RE: PETITION FOR ZONING VARIANCE
E/S Timberpark Court, 610' N of the c/l of Old Bosley Road
(7 Timberpark Court)
8th Election District - 3rd Councilmanic District
Venice K. Paterakis - Petitioner
Case No. 93-169-A

Dear Ms. Paterakis:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3351.

Very truly yours,

Lawrence E. Schmidt
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: People's Counsel
file



Petition for Variance
to the Zoning Commissioner of Baltimore County
for the property located at 7 Timberpark Court

which is presently zoned R.C.4

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

Section 1A 03.4A to permit a 43 foot height in lieu of the maximum 35 foot and to amend the Final Development Plan of Timberline Park, Section Two.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)
Due to the large width of the house and snow exposure 0.6 of the B.O.C.A. code table 11.4A. Due to a B.O.C.A. code snow exposure factor of 0.6 for structures located in open terrain, roofs of an 8/12 pitch are needed to safely handle the snow loads. The house plans were contracted and designed prior to the purchase of the lot at great expense. Based on the design of this two-story structure, a roof height (con't on next page)

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Correct Purchaser/Owner:

(Type or Print Name)

Signature

Address

City State Zip

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City State Zip

Who do solemnly declare and affirm, under the penalties of perjury, that these are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Venice K. Paterakis

Venice K. Paterakis

(Type or Print Name)

Signature

1109 Dulaney Gate Circle 628-2015

Cockeysville, MD 21030

Venice K. Paterakis

above

City State Zip

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

REVIEWED BY: DATE

ORDER RECEIVED FOR FILING
Date 1/22/93
By [Signature]

of at least the above dimensions is necessary to make the structure accept appropriate and safe loads.
I contacted Baltimore County prior to purchase, identified Timberline Park area and was told a height of 50 feet would be the maximum. The discovery of a lower height restriction was not made until recently.

93-169-A



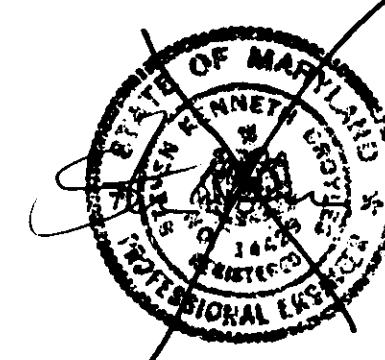
BROYLES, HAYES AND ASSOCIATES, INC.
Engineers • Land Planners • Surveyors
1922 MIDDLEBOROUGH ROAD • BALTIMORE, MD 21221
PHONE (410) 574-2227 • FAX (410) 574-2284

ZONING DESCRIPTION FOR 7 TIMBERPARK COURT

BEGINNING at a point on the east side of Timberpark Court right-of-way which is 50 feet wide, at a distance of 610 feet north of the centerline of Old Bosley Road right-of-way which is 60 feet wide.

BEING Lot number 6 in the subdivision of Timberline Park as recorded in Baltimore County Plat Book# 63, folio# 117 containing 4.226 acres more or less, of land. Also known as 7 Timberpark Court and located in the 8th Election District.

93-169-A



176

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11 Date of Posting: 11/13/92
Posted for: 11/13/92
Petitioner: Venice K. Paterakis
Location of property: 111 W. Chesapeake Avenue, Towson, MD 21204
Location of Sign: 111 W. Chesapeake Avenue, Towson, MD 21204
Remarks: Re: 93-169-A, Item No. 176
Posted by: Arnold Jablon Date of return: 11/17/92
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/10, 1992
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/10, 1992.

THE JEFFERSONIAN,

S. Zake Olson
Publisher

761.62

PUBLIC HEARING FEES

ONE MONTHLY PAYMENT (MIN)

LAST NAME OF OWNER: PATERAKIS

TOTAL: \$50.00

04A04H00461CHRC \$50.00
PK CODE: 59PM11-16-92
Please Make Checks Payable To: Baltimore County

93-169-A

receipt

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

NOV 30 1992

(410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 109 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 110, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-169-A (Item 176)
E/S Timberpark Court, 610' N of E/I Old Busby Road
7 Timberpark Court
City Election District 4 and Council District
Baltimore County Venice K. Paterakis
HEARING: WEDNESDAY, JANUARY 6, 1993 at 9:00 a.m. in Room 110, Old Courthouse.

Variance to permit a 45 foot height in lieu of the maximum 35 foot and to amend the Final Development Plan of Timberpark Park, Section Two.

Arnold Jablon
Director

cc: Venice K. Paterakis

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

December 23, 1992

(410) 887-3353

Mrs. Venice K. Paterakis
1109 Balance Gate Circle
Cockeysville, MD 21036

RE: Case No. 93-169-A, Item No. 176
Petitioner: Venice K. Paterakis
Petition for Variance

Dear Mrs. Paterakis:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this
17th day of November 1992.

Arnold Jablon
DIRECTOR

Received By:

W. Carl Richards Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Venice K. Paterakis
Petitioner's Attorney:

DPW/Developers Engineering Division (Public Services)
Development Review Committee Response Form
Authorized signature Dennis D. Kennedy Date: 12/7/92

Project Name	Waiver Number	Zoning Issue	Meeting Date
✓ Venice K. Paterakis	176		11/30/92 NC
DED DEPRM RP STP TE			
✓ John and Constance Morabito	109		NC
DED DEPRM RP STP TE			
✓ Edward J. and Joyce A. Benesch	181		NC
DED DEPRM RP STP TE			
✓ Edward T. and Leigh Ann Schneider	182		NC
DED DEPRM RP STP TE			
✓ Dale and Sue Chambers	183		NC
DED DEPRM RP STP TE			
✓ COUNT 5	185		NC

90476 Stonegate at Patapsco (Aerial Property) 6-1-92
ZON DED TE (Waiting for developer to submit plans first)

COUNT 1
FINAL TOTALS
COUNT 6
*** END OF REPORT ***



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No. 9 176 (MTR)
Venice K. Paterakis

Dear Ms. Winiarski:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact David Ramsey at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

David A. Ramsey 11/27/92
John Contestabile, Chief
Engineering Access Permits
Division

My telephone number is _____

383-7555 Baltimore Metro - 885-0451 D.C. Metro - 1-800-492-5002 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: December 3, 1992

FROM: Ervin Mc Daniel, Chief
Office of Planning and Zoning
Development Review Section

SUBJECT: Petitions from Zoning Advisory Committee
(November 30, 1992)

The Office of Planning and Zoning has no comments on the following petitions:

Venice K. Paterakis, Item No. 176
John and Constance Morabito, Item No. 179
Edward and Joyce Benesch, Item No. 181
Edward and Leigh Ann Schneider, Item 182
Dale and Sue Chambers, Item No. 183

If there should be any further questions or if this office can provide additional information, please contact Francis Morsey in the Office of Planning at 887-3211.

Prepared by: Francis Morsey

Division Chief: _____

EMCD/FM:rdn

176.ZAC/ZAC1

BPM/Traffic Engineering 12/01/92
Development Review Committee Response Form
Authorized signature _____ Date 12/1/92

Project Name	Waiver Number	Zoning Issue	Meeting Date
✓ Venice K. Paterakis		176	11-30-92
DED DEPRM RP STP TE N/C			
=====			
✓ John and Constance Morabito		179	
DED DEPRM RP STP TE N/C			
=====			
✓ Edward J. and Joyce A. Benesch		181	
DED DEPRM RP STP TE N/C			
=====			
/ Edward T. and Leigh Ann Schneider		182	
DED DEPRM RP STP TE N/C			
=====			
/ Dale and Sue Chambers		183	
DED DEPRM RP STP TE N/C			
=====			
COUNT 5			
Stonegate at Patapsco (Azeal Property)			
			6-1-92
CON DED TE (Waiting for developer to submit plans first)			
=====			
COUNT 1			
FINAL TOTALS			
COUNT 6			
*** END OF REPORT ***			

Rec'd 12/7/92

Rec'd 12/7/92

93-169-A

R.C. 4

SCALE 1" = 200' ±

DATE OF PHOTOGRAPHY
JANUARY 1986

LOCATION
LOCH RAVEN
RESERVOIR
AREA

SHEET
N.E.
16-A

LOCATION
BRIDGE 2
#176

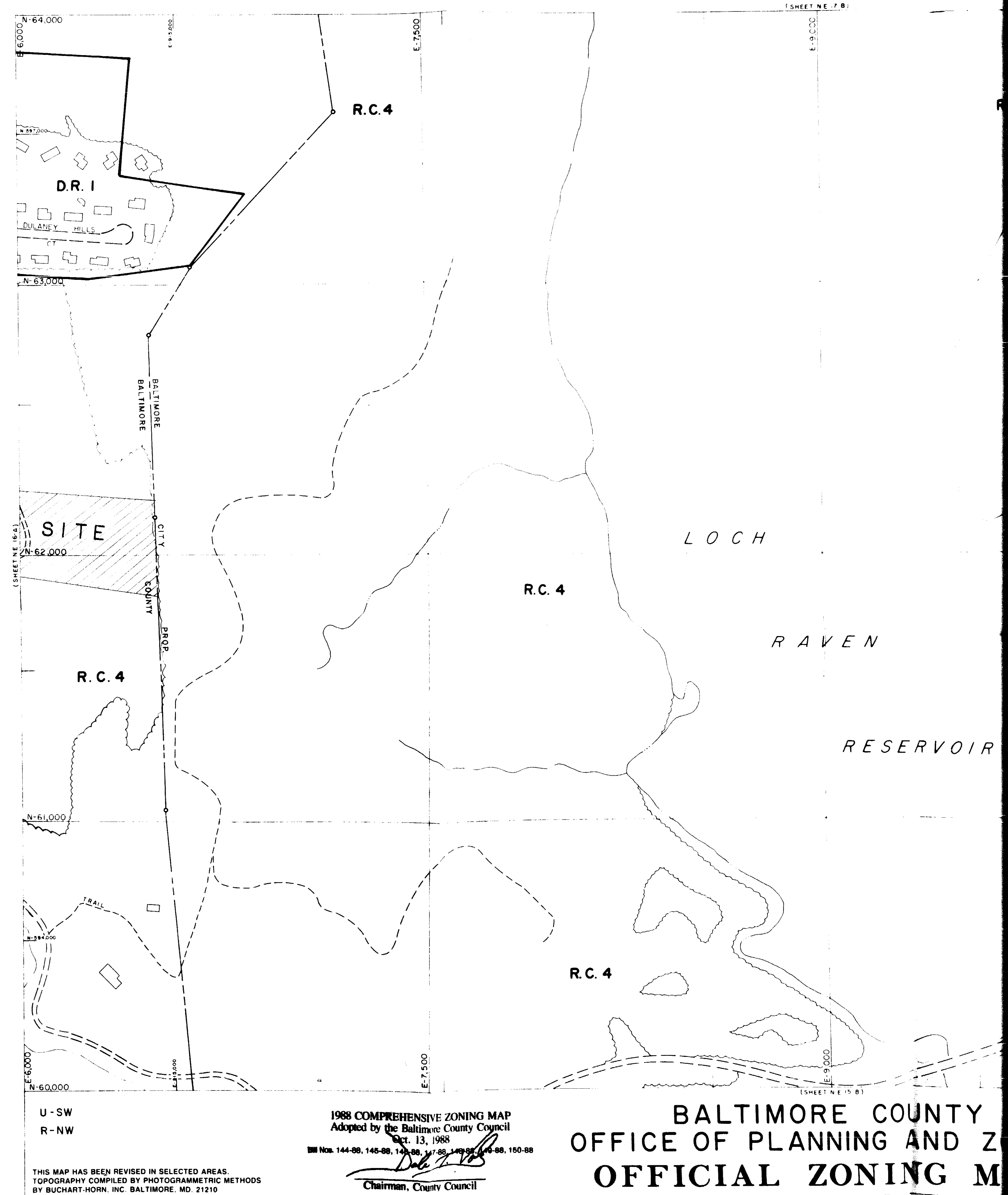
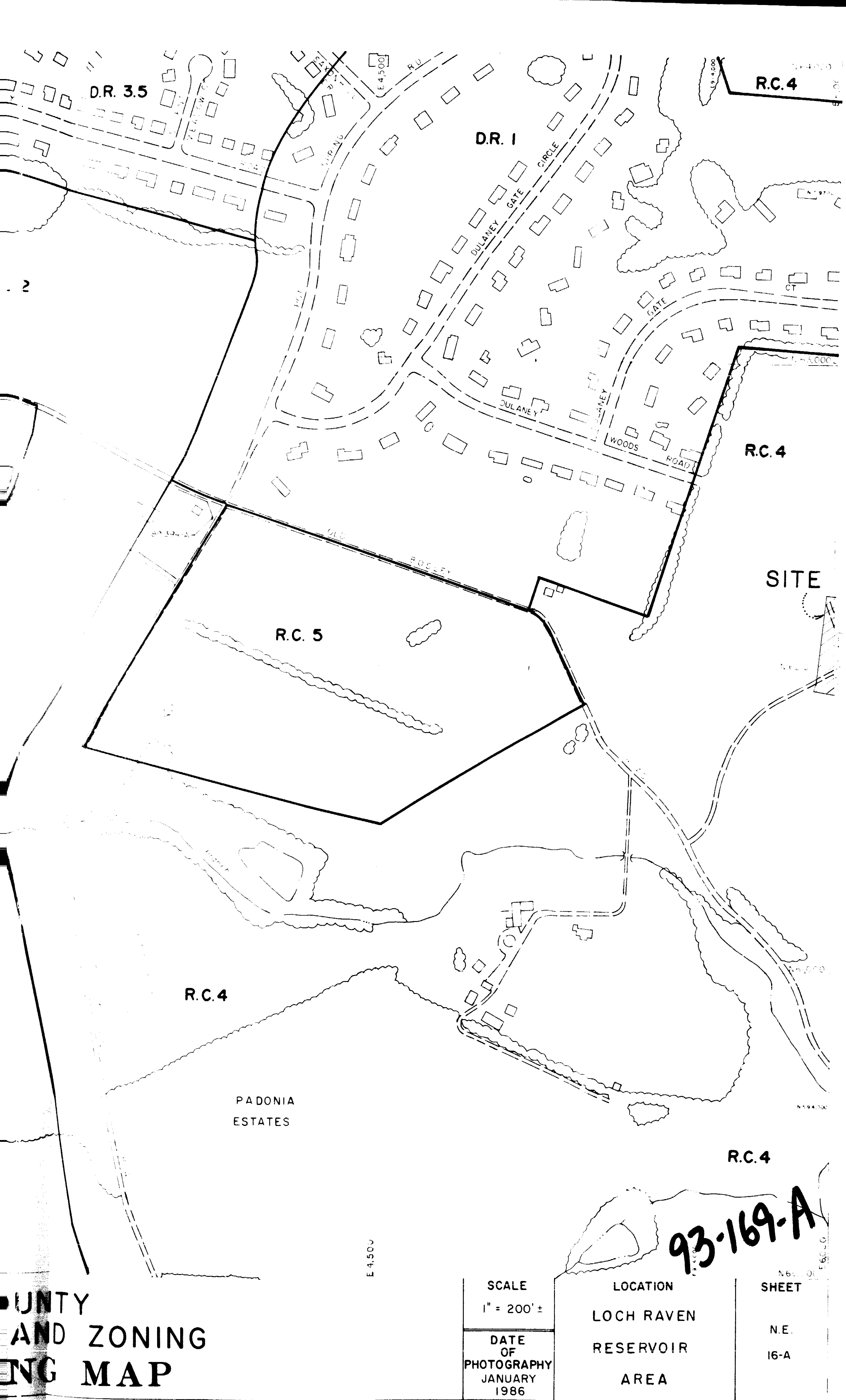
SHEET
N.E.
16-B

Zoning Office USE ONLY!
 reviewed by: MTK ITEM #: 176 CASE#:

Kevin B. Rogers
Timberline Park Architectural
Committee
 Kevin B. Rogers, Member

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PA 3



SITE

93-169-A

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

#176

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 617
SEPTEMBER TERM, 1994

DAVID CROMWELL et al.

v.

ARTHUR THOMAS WARD, III

Wenner,
Cathell,
Murphy,

JJ.

Opinion by Cathell, J.

Filed: January 4, 1995

93CV07265

DOCKET CLERK
11-1-95

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

- I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
- II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
- III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of §307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

[t]he restrictions of the applicable ordinance, taken in conjunction with the unique circumstances affecting the property, must be the proximate cause of the hardship [Emphasis added.]

and

Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request [Emphasis added.]

and

Mr. Ward's property is not unique from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the variance process, i.e., it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is - in and of itself - unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness,

¹ Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

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exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process - an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;"

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"[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height

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elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.²

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.³ Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl. Vol., 1994 Cum. Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

² Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown - they are not shown at all - but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

³ As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

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Baltimore County, however, is a charter county and is exempt from many of the provisions in Md. Code Art. 66B. See Md. Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] . . . this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

[M]odification only of density, bulk, or area requirements in the zoning ordinance . . . where owing to conditions peculiar to the property, and not the result of any action taken by the applicant, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, i.e., height, may be granted

only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance . . . would result in practical difficulty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

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The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty" Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,⁴ if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses⁵

⁴ It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

⁵ Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, (continued...)